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# A GUIDE TO MONTANA LEGAL RESEARCH



BY STEPHEN R. JORDAN

STATE LAW LIBRARY OF MONTANA



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RESEARCH

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## PREFACE

The purpose of this guide is to assist both the legally trained person and the lay person in conducting legal research in Montana. It is the author's intent to provide rudimentary knowledge so that the reader will have a foundation from which to begin researching the law.

Thank-yous are gratefully extended to two fellow employees of the State Law Library: Judith Meadows, State Law Librarian, for her guidance, editorial assistance, and encouragement, and Birgit Stipich for typing this legal research guide.

*Stephen R. Jordan  
Helena, Montana  
January 1991*





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# CREATION OF THE TERRITORY AND STATE OF MONTANA

The Montana Territory was carved out of the Idaho Territory. As a result of a gold strike in 1862, Bannack became the first settlement in what was to become the new territory. When gold was discovered in the Virginia City area in 1863, a movement began to create a new territory.

On May 26, 1864, by Chapter 95, 13. Stat. 85, the territory of Montana was created. In addition to setting the geographic boundaries of the new territory, the legislation, commonly referred to as The Organic Act, created the executive, legislative, and judicial branches of government.

The Enabling Act, February 22, 1889, Chapter 180, 25 Stat. 676, authorized the territories of Montana, Dakota, and Washington to become the states of Montana, North Dakota, South Dakota, and Washington upon the adoption and ratification of state constitutions. Consequently, a constitutional convention was held in Helena from July 4, 1889 to August 17, 1889. On November 8, 1889, Montana was formally admitted as the forty-first state.



# MONTANA COURT STRUCTURE

The constitutional basis for the courts of Montana is Article VII of the 1972 Montana Constitution. Section One states that "[T]he judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law."

## Supreme Court

Located in Helena, the Supreme Court is comprised of one chief justice and six associate justices whose elective terms of office are eight years. An appointive process is utilized when a vacancy occurs before the time of an election.

The court's jurisdiction is primarily appellate (there is no intermediate court in Montana), but in certain matters it has original jurisdiction. In addition, it exercises general supervisory control over all other courts and makes rules governing admission to the bar and procedure in other courts. See *Montana Code Annotated* (M.C.A.) Section 3-2-101 et seq.

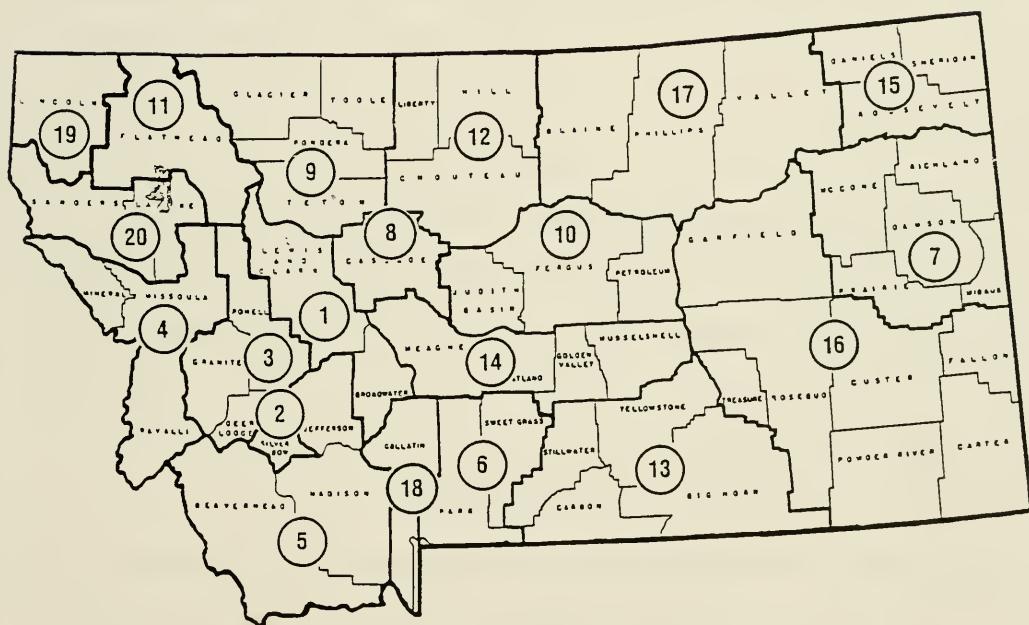
## District Courts

District Courts have original jurisdiction in criminal felony cases, civil and probate matters, and cases at law and equity plus miscellaneous matters. District court judges hold elective office with a term of six years. An appointive process for vacancies similar to that of the Supreme Court exists. District court decisions are appealable to the Supreme Court. M.C.A. Section 3-5-101 et seq.

There are twenty judicial districts encompassing all fifty-six counties in Montana:

1st	Lewis and Clark, Broadwater
2nd	Silver Bow
3rd	Deer Lodge, Granite, Powell
4th	Missoula, Mineral, Ravalli
5th	Beaverhead, Jefferson, Madison
6th	Park, Sweet Grass
7th	Dawson, McCone, Richland, Prairie, Wibaux
8th	Cascade
9th	Teton, Pondera, Toole, Glacier
10th	Fergus, Judith Basin, Petroleum
11th	Flathead
12th	Liberty, Hill, Chouteau
13th	Yellowstone, Stillwater, Carbon, Big Horn
14th	Meagher, Wheatland, Golden Valley, Musselshell
15th	Roosevelt, Daniels, Sheridan
16th	Custer, Carter, Fallon, Powder River, Garfield, Treasure, Rosebud
17th	Phillips, Blaine, Valley
18th	Gallatin
19th	Lincoln
20th	Lake, Sanders

# MONTANA JUDICIAL DISTRICTS



(fig. 1)

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## **Justices' Courts**

Every county must have at least one justice court. It is located at the county seat. It has jurisdiction in criminal misdemeanor matters (fine not to exceed \$500.00 or imprisonment not greater than six months or both). Its civil jurisdiction extends to those contract disputes, damage to real or personal property, and personal injuries, in which the damages being sought are not greater than \$3,500.00. It also has jurisdiction in miscellaneous matters. The Office of Justice of the Peace is an elective one with a four year term. M.C.A. Section 3-10-101 et seq.

## **City Courts**

City courts are in towns and cities. In their exclusive jurisdiction are matters involving violation of a city or town ordinance, both civil and criminal. The Office of City Judge is an elective one with a four year term. M.C.A. Sections 3-11-101 et seq., 7-4-4101 et seq.

## **Small Claims Courts**

The purpose of small claims courts is "to provide a speedy remedy in claims falling hereunder and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial." M.C.A. Section 3-12-101. They provide a forum for lay people to have their legal controversy heard by a legally trained judge without having to hire an attorney. There is no mandatory requirement that each county have a small claims court. Rather, it is created either by county initiative or by the board of county

commissioners after having consulted with the district judge of the judicial district in which the county is located.

Small claims courts have original jurisdiction in causes of action arising from an express or implied contract for the recovery of property or monetary damages when the amount in controversy does not exceed \$2,500. M.C.A. Section 3-12-101 et seq.

### **Workers' Compensation Court**

This court was created by Chapter 537, Legislative Session 1975. There is a right to appeal to the Supreme Court. The workers' compensation judge holds an appointive position with a term of six years. M.C.A. Sections 2-15-1014, 39-71-2901 et seq. For more information on the workers' compensation system please see the heading entitled "Workers' Compensation."

### **Water Courts**

Created by Ch 697 L1979, the water courts adjudicate water rights. There are four water courts whose jurisdiction is determined by geographic boundaries. They are:

1. The Yellowstone River Basin--those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.
2. The lower Missouri River Basin--those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan counties.

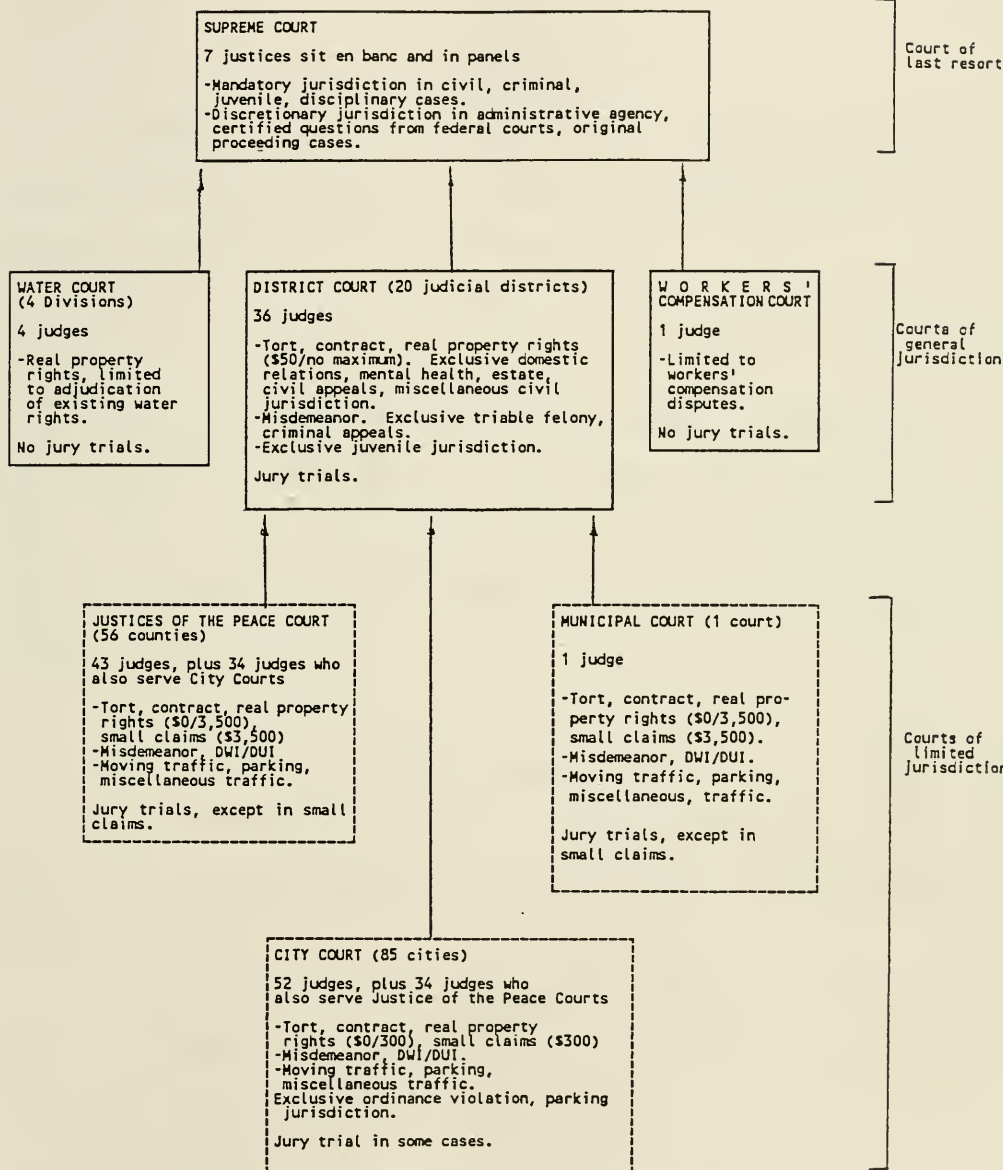
3. The upper Missouri River Basin--those areas drained by the Missouri River to below the mouth of the Marias River.

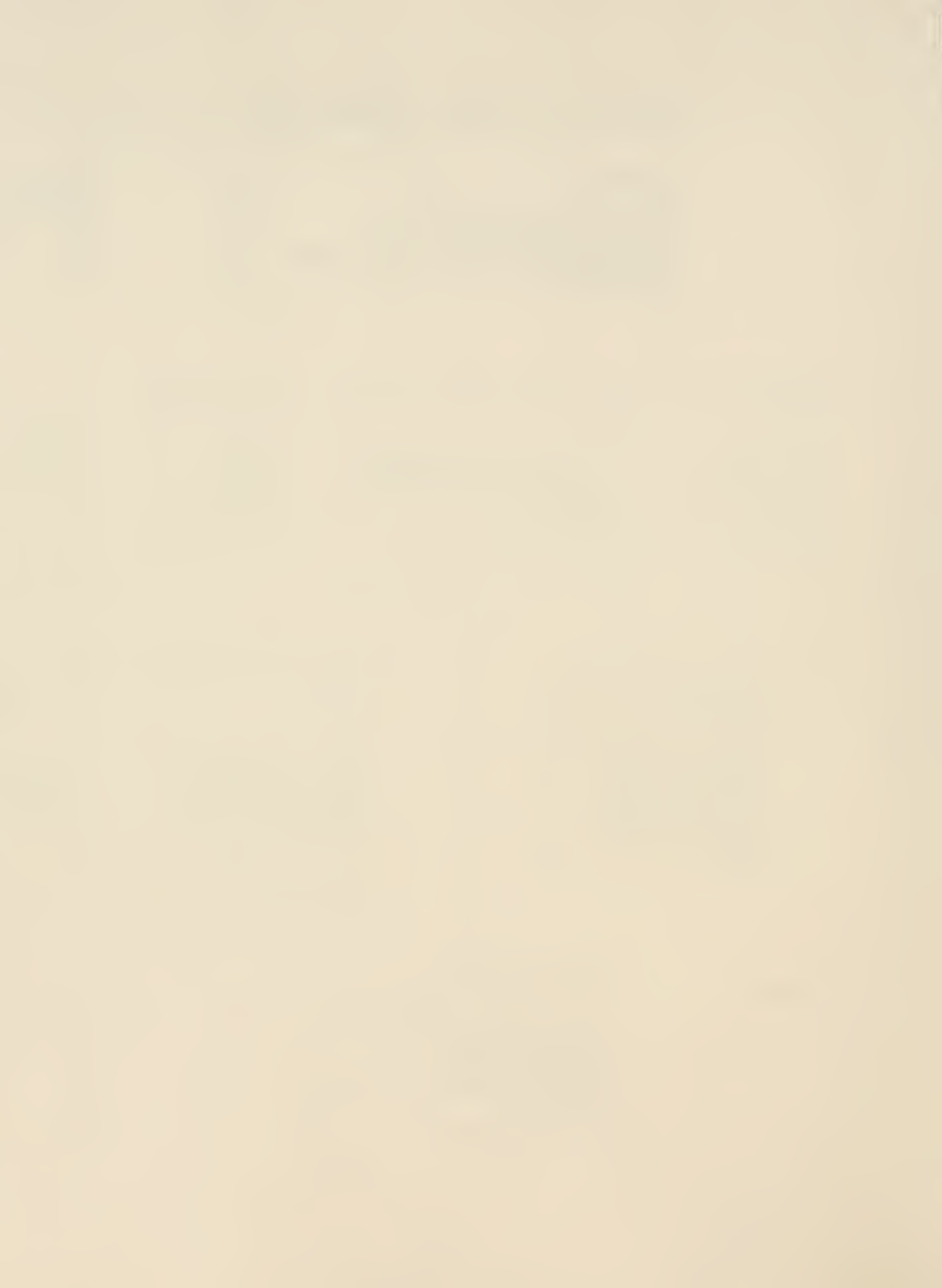
4. The Clark Fork River Basin--those areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

Each water court judge must be a district judge or a retired district judge from within the water division. The water judges hold elective office with terms of four years. There is also the appointive office of the chief water judge, who may also serve as water judge for one of the water divisions. M.C.A. Section 3-7-101 et seq.



# MONTANA COURT STRUCTURE





# **SOURCES OF MONTANA SUPREME COURT OPINIONS**

## **Slip Opinions**

An opinion is first printed in a slip opinion format, meaning that although it contains the full text of the opinion, it is not meant to be permanently retained. It is published by the Supreme Court. No indexes are provided.

## **State Reporter**

This is the first source that permanently retains opinions. A subject index is provided quarterly, and a table of cases is updated regularly. There is no cumulative index. Opinions usually are published approximately two weeks after they have been released by the Supreme Court. It is published by the State Reporter Publishing Company.

## **Montana Reports**

This is the official reporter for Montana. Volume one begins in 1868. There is approximately a six month lag between the issuance of an opinion and its appearance in this source.

In addition to opinions, the following information is included:

- a. Members of the Supreme Court
- b. Officers of the Supreme Court
- c. Attorney General's staff

- d. Directory of the judicial districts of Montana
- e. Supreme Court law clerks
- f. Recent admittees to the Montana Bar

Each volume has a table of cases and a subject index. There is no cumulative index. The publisher is the State Reporter Publishing Company.

### **Pacific Reporter**

This is one of seven regional reporters published by West Publishing Company. In the early 1880's, West began compiling appellate opinions from the states and territories of the United States, resulting in today's coverage of all fifty states. The Pacific Reporter has coverage for fifteen western states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming. It has a first and a second series with both encompassing hundreds of volumes. For Montana opinions prior to 1881 one would need to use **Montana Reports**.

### **DISTRICT COURT OPINIONS**

District court opinions are not published. For information about a particular court opinion, the district court clerk's office at the county courthouse in question should be contacted.



## APPELLATE BRIEFS

According to **Black's Law Dictionary**, 5th edition, appellate briefs are "[w]ritten arguments by counsel required to be filed with appellate court on why the trial court acted correctly (appellee's brief) or incorrectly (appellant's brief)." The original briefs filed before the Supreme Court are maintained by the Office of the Montana Supreme Court Clerk. Copies are available in the State Law Library of Montana whose collection dates from 1903 to the present with a scattering of some before 1903. Each brief is given a docket number for filing purposes. Along with counsels' arguments, a brief may contain any papers and exhibits filed in the district court and a certified copy of the document entries prepared by the district court clerk. Transcripts prepared by court reporters at the trial level are maintained by the district court clerk where the trial was held.

## CASE LAW CITATIONS

A case law citation enables one to locate a case. For example, 208 Mont. 351 and 652 P.2d. 318 are citations. The first number refers to the volume, and the second number refers to the page number in the volume where the specific case can be located. The abbreviation between the two numbers is the particular reporter in question. "Mont." is the abbreviation for Montana Reports, and "P.2d" is for Pacific Reporter Second Series.

## FINDING CASE LAW

There are three ways to find case law in digests: table of cases method, descriptive word method, and topic method. A digest, according to **Black's Law Dictionary**, 5th edition, is "[a]n index to reported cases providing brief statements of court holdings or facts of cases, which is arranged by subject and subdivided by jurisdiction and courts." Digests will be discussed in detail in the next section.

### Table of Cases Method

If the case name is known, e.g., Haynes v. Robinson, one can turn to the Table of Cases volume and obtain the legal citation. There are two different tables. One is the plaintiff-defendant, and the other is defendant-plaintiff. It is important to note that in criminal cases the plaintiff is always the State of Montana.

### Topic Method

West has created approximately 450 topics covering individual legal subjects ranging from "Abandoned and Lost Property" to "Zoning". If one's topic is "Insurance", for example, one can go directly to that topic to look for relevant cases on the particular point of law in question. A caveat - no one state has a judicial opinion on every legal issue. Thus, if no Montana cases exist on the legal issue at hand, one can attempt to locate cases from other states by using the West Key Number system, a system devised by West which assigns a specific Topic and Key Number to specific and particular points of law. Once a specific Topic and Key Number has been identified, one can look for that particular

reference in any West digest. When a case is located by this method, the researcher will find a one-paragraph summary of the case, the year it was decided, its jurisdiction, and its legal citation.

### **Descriptive Word Method**

This is the most general of the three methods. As an example, suppose one is interested in finding case law on the particular subject of historic preservation. Since this subject is not one of the assigned topics, one can look in the Descriptive Word index under "historic preservation." There the following is found: "Historic Preservation - generally Health & E 25.5(8)". "Health & E" is the abbreviation for the topic Health & Environment. At this point one can go to the digest, look at the newly found topic of Health & Environment, look for the Key Number 25.5(8), and see if any cases have dealt with this matter.



# DIGESTS

## Montana Digest

This work has coverage for Montana Supreme Court cases and federal cases that originated in Montana. All three ways of finding case law - table of cases, topic, and descriptive word, can be used. There are individual volumes clearly labeled for all three methods. Published by West, its coverage begins in the early 1880's. If no Montana case exists on the particular point of law in question, one or both of the following digests should be used.

## Pacific Digest

Also published by West, it has the same format as the Montana Digest. This, however, is a broader source in that it covers the fifteen western states listed in the prior discussion on the Pacific Reporter.

## American Digest

This digest, also published by West, is arranged in the same manner as the just discussed two digests. Its coverage, however, extends to all fifty states. It is a huge set divided by time periods. The first series covers cases from 1658 to 1896 (for the most part, the only citations given in this series are state reporter ones). The remaining series are grouped by ten year periods: 1897-1906, 1907-1916 etc. up to a five year grouping of

1976-1981 and 1981-1986. From 1986 to the present, monthly volumes are issued, and at the appropriate time they will be compiled into a multi-year set.

This digest can be somewhat cumbersome due to its scope and the monthly volumes. Because of this, computer assisted legal research (to be discussed later) is frequently used in its place.

## CITATORS

In conducting case law and statutory law research, it is critical to determine whether a particular case or statute is still good authority. For case law it is necessary to determine whether cases from Montana, and at times other states, have cited the case in question, and if so, how it has been treated. For example, has it been overruled, criticized, distinguished, reversed, or followed? And in statutory law, has the statute been amended or repealed, and has it been cited in case law? Two publications contain this information: **Shepard's Montana Citations** and **Shepard's Pacific Reporter Citations**. Although similar in format, there are differences between them in content.

**Shepard's Montana Citations** has two separate tables for case law with both having citations only to Montana cases. The first is the **Montana Reports**. This includes the following citing material:

- a. Other published reports of the same case (parallel citation)
- b. How Montana cases have treated it
- c. How federal cases have treated it
- d. **Montana Law Review**
- e. National law reviews and journals
- f. **American Law Reports** (an annotated reporter)
- g. **American Law Reports, Federal** (an annotated reporter)

The second table is the **Pacific Reporter**. Its citing material is, for the most part, parallel citations, Montana cases, and federal cases. If one has a **Montana Reporter**

citation, the first table would be used. For a **Pacific Reporter** citation, the second table would be used.

For statutory law, **Shepard's Montana Citations** has coverage for the following codes:

- a. Revised Codes of Montana (R.C.M.) 1907 and 1915 Supplement
- b. R.C.M. 1921 and 1923-1927 Supplement
- c. R.C.M. 1935 and 1935 Supplement
- d. R.C.M. 1947 (as amended by replacement volumes to 1971) and 1977 Supplement
- e. **Montana Code Annotated**
- f. Laws of Montana (not in code when cited)

The citing sources for Montana codes are:

- a. Montana legislative treatment
- b. Montana case law treatment
- c. Federal case law treatment
- d. **Montana Law Review**
- e. National law reviews and journals
- f. **American Law Reports**
- g. **American Law Reports, Federal**

In addition to case law and statutory law, the following cited material is included in **Shepard's Montana Citations**:

- a. United States Constitution



- b. United States Code
- c. United States Statutes at Large
- d. Federal Court Rules
- e. Montana Court Rules
- f. Montana Jury Instruction Guides
- g. Ordinances
- h. Table of Montana Acts by Popular Name
- i. 1889 Montana Constitution
- j. 1972 Montana Constitution

The citing sources for these preceding items are:

- a. Montana case law treatment
- b. Federal case law treatment
- c. Montana Law Review
- d. National law reviews and journals
- e. American Law Reports
- f. American Law Reports, Federal
- g. Montana chapter and session laws

Shepard's Pacific Reporter Citations has case law citations only. Whereas Shepard's Montana Citations for case law purposes cites only Montana cases, this citator cites to the fifteen western states covered in the Pacific Reporter. The citing sources are:

- a. Nation-wide case law treatment

- b. Federal case law treatment
- c. American Law Reports
- d. American Law Reports, Federal
- e. American Bar Association Journal

There are two critical distinctions between the two citators regarding case law. In the Montana one, only Montana cases are cited, and the state treatment is only from Montana. In contrast, the Pacific one cites to cases from all fifteen western states contained in the **Pacific Reporter**, and the treatment is national in scope.

Both citators are in hardbound volumes and advance sheets (for updating purposes). The advance sheets for the Montana citator are published quarterly in January, April, July, and October. The Pacific citator advance sheets are published monthly.

The means of retrieving information from either of the citators is the same. One starts with a citation and turns in the citator to that citation in numerical order. Once the specific case or statutory citation has been located, those sources that have cited the references in question are listed. It is important to note that not all cases and statutes have been cited.

To determine the treatment of the reference and which particular points of law from the reference are being addressed by the citing source, refer to the introductory pages contained in all Shepard's citators for guidance.

# **RULES OF PROCEDURE AND EVIDENCE**

## **Civil Procedure**

Article VII Section 2 of the 1972 Montana Constitution empowers the Supreme Court to promulgate rules of practice and procedure for all courts. The Rules of Civil Procedure, effective January 1, 1962, and created by Ch 13 L 1961, and subsequently amended by orders of the Supreme Court, govern all procedural matters in civil cases in the district courts. They are found in Title 25 Chapter 20 of the M.C.A.

## **Appellate Procedure**

Created by Supreme Court Order 11020, December 10, 1965, effective January 1, 1966, and amended by subsequent orders, the Rules of Appellate Procedure govern procedure in both civil and criminal appeals from the district court level to the Supreme Court. They are located in Title 25 Chapter 21 of the M.C.A.

## **Criminal Procedure**

The Rules of Criminal Procedure were created by Ch 196 L 1967. Effective January 1, 1968, they govern "the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law." M.C.A. Section 46-1-101. They are located in M.C.A. Section 46-101 et seq.

## **Justice and City Courts**

Supreme Court Order dated February 9, 1990, effective June 1, 1990, established rules of civil procedure for both justice and city courts. Since these rules were promulgated after the 1989 edition of the **Montana Code Annotated** was published, they are not contained within the M.C.A. They will be included in the 1991 edition.

### **Appeal to District Court from Justice and City Courts**

"Appeals from a justice or city court to a district court are governed by Title 25, Chapter 33, except that the undertaking on appeal, when a judgment is for the payment of money may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs." Rule 24 of Supreme Court Order dated February 9, 1990.

### **Small Claims Courts**

Procedure in small claims courts is governed by M.C.A. Section 25-35-501 et seq. Ch 586 L 1981 created these rules.

### **Rules of Evidence**

Created by Supreme Court Order 12729, December 29, 1976, effective July 1, 1977, these rules govern all evidentiary matters in all state courts except where excepted. They are located in Title 26 Chapter 10 M.C.A.

# **SUPERSEDED STATUTES**

## **Revised Statutes of the Territory of Montana**

Published in 1880 by the Helena "Independent", this one-volume work reflected the laws in force as of February 21, 1879, which was the end of the eleventh regular legislative session. It is divided into five divisions: Code of Civil Procedure, Probate Practice Act, Criminal Practice Act, Criminal Laws, and General Laws.

## **The Revised Statutes of Montana**

The next updating occurred in 1881 with laws in force as of February 23, 1881, the end of the twelfth legislative session. It also includes legislation enacted by the Extraordinary Session of the eleventh regular session: July 1, 1879 to July 22, 1879. The publisher was George E. Boos, Public Printer and Binder, Helena. It is a one volume work.

## **Compiled Statutes of Montana**

In 1888 the Journal Publishing Company of Helena published the laws in force as of completion of the fifteenth regular session which ended March 20, 1867. It is a one-volume work.

## **The Complete Codes and Statutes of Montana**

This compilation is popularly known as the "Sanders Edition", so named after its editor, Wilbur F. Sanders, a prominent public figure of the time. It reflected the laws

in force on July 1, 1895. A new format was instituted in this compilation. Instead of five divisions, there are four: Political Code, Civil Code, Code of Civil Procedure, and Penal Code. It was published in Helena in 1895 as a one-volume work.

### **The Codes and Statutes of Montana**

For the first time, with this compilation, annotations appeared. A two volume set (volume I: Political Code and Civil Code; volume II: Code of Civil Procedure and Penal Code), it reflected the laws in force on July 1, 1895. Volume I was published in Butte by Intermountain Publishing Company, and volume II was published in Anaconda by Standard Publishing Company.

### **The Revised Codes of Montana of 1907**

Another two volume set similar to the prior source, this reflected the laws in force as of July 1, 1907. Published in Helena in 1908 by State Publishing Company, it has annotations.

### **1915 Supplement to the Revised Codes of Montana of 1907**

This work consists of six parts: The Constitution, Political Code, Civil Code, Code of Civil Procedure, Penal Code, and Miscellaneous Laws. Published in 1916 by Bancroft-Whitney, San Francisco, it is annotated and reflected the laws in force as of 1916. It is a one volume work.

### **The Revised Codes of Montana of 1921**

This four volume annotated set (Political Code, Civil Code, Code of Civil Procedure, and Penal Code), published by Bancroft-Whitney in 1921, reflected the laws in force as of 1921.

### **The Revised Codes of Montana of 1935**

A five-volume annotated work (Miscellaneous Documents and Political Code, Political Code, Civil Code, Code of Civil Procedure, and Penal Code) published in 1936 by State Publishing Company of Helena and the Tribune Printing and Supply Company of Great Falls, it reflected the laws in force as of 1935.

### **1939 Supplement of the 1935 Montana Revised Codes**

This supplement contains the laws passed by the 1937 and 1939 legislature. It is annotated and was published by Courtright Publishing Company of Denver.

### **The Revised Codes of Montana of 1947**

For thirty years, 1947-1977, this annotated work was the foundation for Montana statutory law. A multi-volume set with periodic updated replacement volumes, it was annually updated with pocket parts. The Allen Smith Company of Indianapolis was the publisher.

One of its major differences with prior codes was that its format changed from

being section only, e.g., Section 6224, to that of title-chapter-section; e.g., Section 94-35-100. The vast majority, however, is title-section only. A table of corresponding sections for the 1907, 1921, and 1935 codes is provided in volume nine.

### **Revised Code of Montana 1977 Cumulative Supplement**

In 1977 Allen Smith Company published a multi-volume annotated set which updated the law through 1977.



## CURRENT STATUTORY FORMAT

As a result of Ch 419 L 1975, Ch 1 L 1977, and Ch 1 L 1979, the statutory law of Montana assumed its present format as the **Montana Code Annotated**. Published by the Montana Legislative Council after the completion of each regular legislative session, its format is a title-chapter-part-section one. For example, 1-1-501 is read as title one, chapter one, part five, section one. Each edition reflects the laws in force at the end of the most current session.

The **Montana Code Annotated** is a multi-volume work topically arranged. Some of its features are a popular name table of specific legislation and a words and phrases table showing certain words and phrases which are defined by statute (traditionally, this information is contained in the last volume). Volume one contains the 1972 Montana Constitution in addition to its statutory material.

Although the word "annotated" is in the title, this is not an annotated work. Annotations are in the **Montana Code Annotated Annotations**, a source to be discussed later. A subject index provides access to the code.



## STATUTORY HISTORY

Immediately below each statute is its statutory history. An example is M.C.A. Section 50-31-104, from the Montana Food, Drug, and Cosmetic Act (see figure two). It shows that the statute was originally enacted in 1967 as a result of Ch 307, specifically, in section 21 of Ch 307. It has been amended twice since: 1971 and 1974. Thus, by looking at a specific chapter and legislative year, one can determine exactly what changes were made in the statute. The R.C.M. citation is a reference to where in the Revised Codes of Montana of 1947 the statute was codified.

In the preface to the 1989 M.C.A. on page iii of volume one, the following is noted regarding references in the statutory history to the R.C.M., 1947: "[W]hen an R.C.M. section was split into several MCA sections, the history may be confusing or even misleading. To redo all histories to have them coincide exactly with MCA sections would have been nearly impossible."

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch 307, L 1967; amd. Sec. 3, Ch 171, L 1971; amd. Sec. 4, Ch 349, L 1974; R.C.M. 1947, 27-721.

Cross-References

Adoption and publication of rules, Title 2, ch 4, part 3.

(Fig. 2)



## CROSS REFERENCES

A cross reference is a reference to another part of the Montana Code Annotated that is similar in nature to the statute in question. As you can see in figure two, there is a cross reference for M.C.A. Section 50-31-104 to M.C.A. title 2, chapter 4, part 3.

## MONTANA CODE ANNOTATED ANNOTATIONS

According to **Black's Law Dictionary**, 5th edition, an annotation is "[a] remark, note, case summary, or commentary on some passage of a book, statutory provision, or the like, intended to illustrate or explain its meaning." Those Montana statutes that have been annotated are contained in the **Montana Code Annotated Annotations**, published by the Montana Legislative Council in even-numbered years. The annotations are from the following sources:

- a. Supreme Court opinions
- b. Attorney General opinions
- c. Administrative Rules of Montana
- d. Montana Law Review
- e. Corpus Juris Secundum (a legal encyclopedia)
- f. American Jurisprudence (a legal encyclopedia)
- g. West's Topic and Key Number

Annotations can be extremely helpful in researching a statute. For example, the Supreme Court and Attorney General annotations include a summary of the issues

involved and their resolution. Also at times, compiler's comments are included which provide a succinct history of the statute.

The arrangement of the **Annotations** is the same as the **Montana Code Annotated** - by title-chapter-part-section. It is important to note that not all statutes have been annotated. When a statute is not in **Annotations**, it means that it has not been formally addressed.

Volume one differs from the other volumes in its contents. It has the following information:

- a. Tables allowing one to trace prior codification to its present citation
- b. A description of county boundaries
- c. A report from the Montana Code Commissioner regarding "all changes made during the continuous recodification since the last report."
- d. The Organic Act
- e. The Enabling Act
- f. The Declaration of Independence
- g. The United States Constitution
- h. The 1889 Montana Constitution
- i. The 1972 Montana Constitution
- j. A table of corresponding sections from the 1889 constitution to the 1972 one
- k. Annotations to the 1972 Montana Constitution.

## THE MONTANA LEGISLATURE

The Montana Legislature consists of two separate bodies: the Senate and the House of Representatives. The Senate has fifty members, and the House has 100 members. Terms of office for senators and representatives are, respectively, four years and two years. Regular legislative sessions are held every two years in odd-numbered years. Special sessions, which address specific topics, can be called when needed.

When in session, the following telephone numbers are in operation:

General Information and Message Center: (406) 444-4800

Public Information Office: (800) 237-5079

When not in session the Montana Legislative Council is the point of contact. Its telephone number is (406) 444-3064.





## HOW A BILL BECOMES A LAW

The Montana Legislature is the branch of state government responsible for introducing and enacting legislation. What follows is a discussion of the procedure used in this process.

The first step is for a legislator to present a proposed bill to the Montana Legislative Council for formal drafting. Once this is completed, the bill's first reading is held in the chamber, either the Senate or House of Representatives, that the sponsor is a member of. A "reading" is merely a reading of the bill's subject. No debates or introduction of amendments are allowed at this time.

After the first reading, the bill is sent to a committee. After public hearings are conducted, the committee takes a roll call vote and reports either that the bill "do pass", "do pass as amended", or "do not pass". The next step is the second reading of the bill in the particular chamber in question. This is the first time that floor debate and introduction of amendments are allowed. A roll call vote is taken. After this, the third reading is held, no debate or amendments are permitted, and another roll call vote is held. The bill is then sent to the other chamber where the same procedure is followed, with the language being, "be concurred in", "be not concurred in", or "be concurred in, as amended."

If the second chamber agrees with the first chamber, the bill is sent to the governor. The governor can sign the bill into law, offer an "amendatory veto", or veto the

entire bill. If it is vetoed, a two-thirds vote of the members of each chamber present is needed to override it.

If the second chamber amends the bill, it is returned to the first chamber at the second reading level for debate solely on the amendment. If agreement is reached, the bill is sent to the governor. If agreement is not reached, a conference committee consisting of three members from both chambers is formed to address the amendments. After this is done, the bill goes to the second reading level in both chambers. If one chamber disapproves, a free conference committee is appointed with the power to address the entire bill.

# LEGISLATIVE SOURCES

## House and Senate Journals

Journals provide a daily account of legislative action such as the introduction of bills, their readings, and roll call votes. Published by the Montana Legislative Council, each session year stands alone with an index divided into subject, House Bills, Senate Bills, resolutions, and joint resolutions. There is no text or abstract of floor debate.

The first session of the Montana Legislature was held in Bannack, December 12, 1864 to February 9, 1865. The next seven sessions, 1866 to 1874, were held in Virginia City. In 1876 the ninth session met in Helena, and all subsequent sessions have met there as well.

Initially, there was no body known as the Senate. Rather, there was a Council with Councilors. As a result of the 1889 Montana Constitution, the sixteenth session in 1889 was the first one with a Senate and Senators.

## Laws and Resolutions of the State of Montana

This source, popularly known as "session laws", contains the legislation approved by each regular and special legislative session. Listed in chronological order (there is no subject arrangement) and designated by chapters; e.g., "Chapter No. 1, Chapter No. 2" etc., it provides the language of the laws enacted during that particular session. These laws then become codified in the **Montana Code Annotated**.

Each session year stands alone in its own individual volume. There is never more

than one session year per volume. Each session year has its own index. There is no cumulative index.

The present format is as follows. Below the chapter heading is the bill number in brackets. A summary of the legislation follows and then, the actual language itself. New language being added to existing statutes is in italics, with existing language and completely new statutes in regular print. The date of approval is at the end of the chapter.

In addition to the laws themselves, information is also included regarding House and Senate members, resolutions, and joint resolutions. A resolution is a formal expression of one or both chambers' will or opinion on a particular matter. It is not law. Tables, such as bill number to chapter number, chapter number to bill number, session law to **Montana Code Annotated**, and effective dates of legislation are provided.

Ballot issues which have been voted on by the public between legislative sessions, such as constitutional amendments, initiatives, and referenda, are published in the next volume of session laws.

### **Legislative Review**

Since 1977 the Legislative council has published the **Legislative Review** after the conclusion of each legislative session. It has a summary of provisions by chapter, Senate Resolutions, House Resolutions, and joint resolutions. It also has a subject index and several tables: code sections affected, session laws affected, session law to code, effective date, bill to chapter number, and chapter number to bill number.

## **History and Final Status**

Since 1981 the Legislative Council has published the **History and Final Status of Bills and Resolutions of the Senate and House of Representatives**. It has the following information: a sponsor list of legislation, final status of Senate Bills and House Bills, dates each bill was addressed by the legislature and specific committees, and the date each enacted bill was signed by the governor and its effective date. It also has a subject index and an effective date table.



## LEGISLATIVE HISTORY

Quite often in interpreting a statute it is important to attempt to determine its legislative intent. Why was a particular bill enacted? What were the comments of the individual committee members? Was there any testimony by witnesses? By looking at a bill's legislative history these questions may possibly be answered.

A legislative history consists of the minutes from the House and Senate committees that held hearings on the bill, roll call votes, committee attendance, the text of any amendments submitted, and when given, witness testimony, prepared statements, and exhibits. It is important to note that the minutes are not verbatim. Rather, they are a summary of what was said by the committee members.

In addition, all the readings of a bill from its introduction to its passage or defeat are available. These enable one to follow the evolution of a bill's language. And, roll call votes by the full House and Senate, date of passage, and date of effectiveness are available. There is no record of floor debate.

The State Law Library of Montana has copies of legislative minutes from 1961 to the present. The State Archives, whose collection pre-dates the State Law Library's, is the depository for the original minutes. It is important to note that only since approximately the early 1970's have the minutes consistently contained thorough substantive material. In prior years it is quite common for the treatment to be so cursory that no indication of intent is available.





# ADMINISTRATIVE LAW

## Administrative Procedure Act

In addition to statutory law and case law, there is administrative law. M.C.A. Section 2-4-101 et seq. provides the statutory authority for administrative agency rulemaking and adjudication. It is based on the 1961 Revised Model State Administrative Procedures Act adopted by the National Conference of Commissioners on Uniform State Laws. It was enacted by Ch 2 Special Session L 1971.

The following executive departments are governed by the Act: Administration, Agriculture, Auditor, Commerce, Education, Family Services, Fish Wildlife and Parks, Health and Environmental Sciences, Governor, Highways, Institutions, Justice, Labor and Industry, Lands, Lieutenant Governor, Livestock, Military Affairs, Natural Resources and Conservation, Public Service Regulation, Revenue, Secretary of State, and Social and Rehabilitation Services.

"In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice." M.C.A. Section 2-4-601 (1). M.C.A. Section 2-4-601 et seq. provides the mechanism for a disputant's contested case to be formally heard. If, after all administrative remedies are exhausted a disputant still is aggrieved, judicial redress can be sought by filing an action in district court. M.C.A. Section 2-4-701 et seq.

For copies of adjudicatory decisions, the individual agency in question should be contacted.

## **Administrative Rules of Montana**

Each executive department has its own administrative rules, and these are contained in this source, popularly called ARMs. Updated quarterly, the ARMs are in a looseleaf format and are arranged by department. A subject index provides access. The ARMs are published by the Office of Secretary of State. It is the equivalent of the **Code of Federal Regulations**.

Citations to the ARMs are in a title-chapter-sub-chapter-section format. For example, 38.2.3602 is read as title 38, chapter 2, sub-chapter 36, section 2. 2.5.401 is read as title 2, chapter 5, sub-chapter 4, section 1.

## **Montana Administrative Register**

Issued biweekly, this paperback source contains notices of proposed and adopted rules, an interpretation section, and Attorney General opinions. It enables one to determine the current status of administrative rules. It is published by the Office of Secretary of State. It is equivalent to the **Federal Register**.

## WORKERS' COMPENSATION

The Workers' Compensation Act and the Occupational Diseases Act, M.C.A. Section 39-71-101 et seq., 39-72-101 et seq. require that administrative remedies be exhausted before seeking judicial redress. When a worker who is entitled to benefits is injured, a claim is filed with the insurer or the Division of Workers' Compensation of the Department of Labor and Industry. If a dispute arises between the worker and the insurer, it is required that relief be sought through a Department of Labor and Industry mediator. After mediation procedures are exhausted, one can appeal to the Office of the Workers' Compensation Judge. Decisions of this court may be appealed to the Supreme Court.



## ADVISORY OPINIONS

### Attorney General

The Attorney General is the chief legal officer of the state. Duties of this office include prosecuting or defending all cases in which the state is a party, supervising county attorneys, and providing legal opinions to certain state, county, and city officials. M.C.A. Section 2-15-501 et seq.

The legal opinions are contained in **Report of the Attorney General of the State of Montana**. They are first issued in slip opinion format and are retained in this manner until being bound for permanency. Volume one begins with the year 1905. Each individual volume has its own subject index. The only cumulative index is for volumes one through twenty-seven which covers the years 1905 to 1958. Both the slip opinions and bound volumes are published by and are available from the Justice Department.



## UNIFORM LAWS

Uniform laws are drafted by the National Conference of Commissioners on Uniform State Laws. Members are either practicing attorneys, judges, law professors, or legislators, and all are members of the bar. All fifty states, the District of Columbia, and Puerto Rico are represented. An annual meeting is held immediately preceding the American Bar Association's annual meeting. Its purpose is to "promote uniformity in state law, on all subjects where uniformity is desirable and practicable, by voluntary action of each state government." (Page III, volume 13A, **Uniform Laws Annotated**.) The body's address is 645 North Michigan Avenue, Suite 510, Chicago, Illinois 60611. Its telephone number is (312) 321-9710.

Following are some of the uniform laws adopted by Montana along with their statutory citations and dates of adoption:

Accident Reporting Act - Title 61 Chapter 7 - 1939

Acknowledgement Act - Title 1 Chapter 5 - 1895

Adoption Act - Title 40 Chapter 8 Part 1 - 1981

Alcoholism and Intoxication Treatment Act - Title 53 Chapter 24 Part 3 - 1974

Anatomical Gift Act - Title 72 Chapter 17 - 1969

Arbitration Act - Title 27 Chapter 5 - 1985

Attendance of Witnesses from Without a State in Criminal Proceedings, Act to Serve - Title 46 Chapter 15 Part 1 Sections 11-14 - 1973

Brain Death Act - Title 50 Chapter 22 Part 1 Section 1 - 1977

Child Custody Jurisdiction Act - Title 40 Chapter 7 - 1977

Close Pursuit Act - Title 46 Chapter 6 Part 4 Section 11 - 1967

Commercial Code - Title 30 Chapters 1-9 - 1963

Common Trust Fund Act - Title 32 Chapter 1 Part 7 - 1955

Controlled Substances Act - Title 50 Chapter 32 - 1973

Crime Victims' Reparation Act - Title 53 Chapter 9 - 1988

Criminal Extradition Act - Title 42 Chapter 30 -1973

Declaratory Judgments Act - Title 27 Chapter 8 - 1935

Determination of Death Act - Title 50 Chapter 22 Part 1 Section 1 - 1977

Division of Income for Tax Purposes Act - Title 15 Chapter 31 Part 3 - 1933

Durable Power of Attorney Act - Title 72 Chapter 5 Part 5 Sections 1-2 - 1974

Enforcement of Foreign Judgments Act - Title 25 Chapter 9 Part 5 Sections 1-8 - 1989

Evidence, Rules of - Title 26 Chapter 10 - 1977

Facsimile Signatures of Public Officials Act - Title 2 Chapter 16 Part 1 Section 14 - 1959

Federal Lien Registration Act - Title 71 Chapter 3 Part 2 -1959

Foreign Land Sales Practices Act - Title 76 Chapter 4 Part 12 - 1969

Fraudulent Conveyance Act - Title 31 Chapter 2 Part 3 - 1945

Health Care Information Act - Title 50 Chapter 16 - 1967

Limited Partnership Act - Title 35 Chapter 12 - 1981

Machine Gun Act - Title 45 Chapter 8 Part 3 Sections 1-9 - 1935

Management of Institutional Funds Act - Title 72 Chapter 30 - 1973



Marriage and Divorce Act - Title 40 Chapters 1 and 4 - 1975  
 Motor Vehicle Safety-Responsibility Act - Title 61 Chapter 6 - 1951  
 Out-of-State Parolee Supervision Act - Title 46 Chapter 23 Part 11 - 1937  
 Parentage Act - Title 40 Chapter 7 Part 1 - 1975  
 Partnership Act - Title 35 Chapter 10 - 1947  
 Post-Conviction Procedure Act - Title 46 Chapter 21 - 1967  
 Premarital Agreement Act - Title 40 Chapter 2 Part 6 - 1987  
 Principal and Income Act - Title 72 Chapter 25 - 1983  
 Probate Code - Title 72 Chapters 1-5, Chapter 16 Part 6 - 1974  
 Reciprocal Enforcement of Support Act - Title 40 Chapter 5 Part 1 - 1969  
 Regulating Traffic on Highways Act - Title 61 Chapters 8 and 9 - 1955  
 Residential Landlord and Tenant Act - Title 70 Chapter 24 -1977  
 Rights of the Terminally Ill Act - Title 50 Chapter 9 - 1985  
 Securities Act - Title 30 Chapter 10 Parts 1-3 -1961  
 Simplification of Fiduciary Security Transfers Act - Title 30 Chapter 10 Part 4 -  
 1971  
 State Administrative Procedure Act - Title 2 Chapter 4 - 1971  
 State Law for Aeronautics Act - Title 67 Chapter 1 Part 2 -1929  
 Status of Convicted Persons Act - Title 46 Chapter 18 Part 8 Section 1 - 1973  
 Statutory Rule Against Perpetuities Act - Title 70 Chapter 1 Part 8 Sections 1-7 -  
 1989  
 Testamentary Additions to Trust Act - Title 72 Chapter 2 Part 3 Section 14 - 1974  
 Trade Secrets Act - Title 30 Chapter 14 Part 4 - 1985

Transboundary Pollution Reciprocal Access Act - Title 75 Chapter 16 Part 1 - 1983

Transfer to Minors Act - Title 72 Chapter 26 Parts 5-8 - 1985

Trustees' Powers Act - Title 72 Chapter 21 - 1974

Unclaimed Property Act - Title 70 Chapter 9 Parts 1-3 - 1983

## INTERSTATE COMPACTS

According to **Black's Law Dictionary**, 5th edition, an interstate compact is "[a] voluntary agreement between two or more states which is designed to meet common problems of the parties concerned." Following are interstate compacts Montana is a party to:

Driver License Compact - Title 61 Chapter 5 Part 4

Interstate Agreement on Detainees - Title 46 Chapter 31 Parts 1-2

Interstate Agreement on Qualification of Educational Personnel -  
Title 20 Chapter 4 Part 1

Interstate Compact on Juveniles - Title 41 Chapter 6 Part 1

Interstate Compact on Mental Health - Title 53 Chapter 22 Part 1

Interstate Compact on the Placement of Children - Title 41 Chapter 5 Part 1

Interstate Compact Regarding Probation and Parole - Title 47 Chapter 23 Part 11

Interstate Library Compact - Title 22 Chapter 1 Part 6

Interstate Mutual Aid Compact - Title 10 Chapter 3 Part 2 Sections 4-8

Interstate Oil and Gas Conservation Compact - Title 82 Chapter 11 Part 3

Multistate Highway Transportation Agreement - Title 61 Chapter 10 Part 11

Multistate Tax Compact - Title 15 Chapter 1 Part 6

Northwest Interstate Compact on Low-Level Radioactive Waste Management -  
Title 75 Chapter 3 Part 5

Vehicle Equipment Safety Compact - Title 72 Chapter 2 Part 2

Western Interstate Corrections Compact - Title 46 Chapter 31 Parts 3-4

Western Interstate Nuclear Compact - Title 90 Chapter 5 Part 2

Western Regional Higher Education Compact - Title 20 Chapter 25 Part 8

Yellowstone River Compact - Title 85 Chapter 20 Part 1

### **INTERNATIONAL AGREEMENTS**

Montana is a party with the Canadian provinces of Alberta, British Columbia, and Saskatchewan to the following:

Canadian Boundary Advisory Committee - Title 1 Chapter 13 Part 1

## COMPUTER ASSISTED LEGAL RESEARCH

For centuries, a library's resources were made of paper. Then, formats such as microfilm and microfiche were introduced. Today, computerized databases are making significant impact on research of all kinds, including legal research.

As a rule, computer assisted legal research (CALR) does not replace law books; it complements them. Quite often, it would be inappropriate to use CALR rather than manually searching for legal information. CALR is not inexpensive. Searches cost money. But when it is appropriate, CALR can be extremely thorough and effective. What might take several hours of manual searching often can be accomplished in a few minutes of CALR.

There are two major commercial CALR systems: LEXIS/NEXIS and WESTLAW. LEXIS/NEXIS is owned by Mead Data Central Corporation of Dayton, Ohio, and WESTLAW is owned by West Publishing Company of St. Paul, Minnesota. Following is the specific Montana legal information each has:

	<u>LEXIS/NEXIS</u>	<u>WESTLAW</u>
Supreme Court Decisions	1965-present	1945-present
Attorney General Opinions	1977-present	1977-present
State Tax Appeals Board		
Decisions	1985-present	1985-present
Montana Code Annotated	Yes	No
1972 Montana Constitution	Yes	No
Public Utilities Reports	No	1953-present

In addition to Montana coverage, both systems have legal information on all fifty states and on federal law as well. More specifically, case law for all the states and federal case law (district courts, appellate courts, Supreme Court), federal statutory law, federal administrative law, and state statutory law for approximately forty-five states (both have the goal of having all fifty states) are available.

Considerable flexibility is provided by CALR. One can focus only on Montana law or one can expand the search by searching, for example, neighboring western states, or the entire nation. CALR on both systems is available through the State Law Library of Montana on a cost-recovery basis.

Information about LEXIS/NEXIS and WESTLAW can be obtained by calling their respective telephone numbers: 800-543-6862 and 800-328-9833.

### **MONTLAW**

This computer assisted legal research system is devoted almost exclusively to Montana law. Its coverage includes or will include Montana Supreme Court opinions, Attorney General opinions, Montana federal district court opinions, ninth circuit court opinions, bankruptcy court opinions, rules of court, decisions of the Sentence Review Division, and summaries of district court decisions, water court decisions, and Workers' Compensation Court decisions. It is provided by the State Reporter Publishing Company. Information about MONTLAW can be obtained by calling (406) 227-7903.

## LOOSELEAF PUBLICATIONS

A looseleaf publication is a source that can be updated as often as necessary. It can be a one volume or a multi-volume work and is usually in a three-ring binder format. A key feature is that it focuses on one specific legal topic. It has, many times, both case law and commentary. In some looseleaf publications, specific state by state coverage is provided. Following are examples of those with sections concerning Montana.

<u>Title</u>	<u>Publisher</u>
All States Tax Guide	Prentice Hall
Blue Sky Law Reporter (covers states' securities laws)	Commerce Clearing House
Consumer Credit Guide	Commerce Clearing House
Employment Practices	Commerce Clearing House
Environment Reporter	Bureau of National Affairs
Labor Relations Reporter	Bureau of National Affairs
Secured Transaction Guide	Commerce Clearing House
State and Local Taxes	Prentice Hall
Unemployment Insurance Reporter	Commerce Clearing House





## FEDERAL COURTS

Although the focus of this manual is on Montana legal resources, it would be appropriate to briefly mention the role played by the federal court system in Montana.

### District Courts

These are the courts of first impression. There are four federal district courts in Montana: Billings, Helena, Great Falls, and Missoula. Unlike the opinions of Montana district courts, some federal district court opinions are published. Those that are published are contained in a West publication, **Federal Supplement**. It is arranged similarly to other West reporters, and access is gained by the **Federal Practice Digest**, a West publication whose coverage is nation-wide.

### Bankruptcy Courts

These courts have jurisdiction over bankruptcy matters. There is one bankruptcy court in Montana - it is in Butte. The opinions from these courts may be published. Those that are published are contained in a West reporter, **Bankruptcy Reporter**. West also publishes a digest which provides access to the cases- **Bankruptcy Digest**. It has the table of cases and descriptive word methods of access. **Federal Practice Digest** can also be used.

## Courts of Appeal

These are the intermediate courts. They hear cases appealed from the district courts. There are thirteen appellate circuits in the United States with Montana being in the ninth. Headquartered in San Francisco, the ninth circuit has many other states and even a territory in its jurisdiction: Idaho, Washington, Oregon, California, Nevada, Arizona, Alaska, Hawaii, and Guam. Approximately one-half of federal appellate opinions are published. They are contained in a West publication - **Federal Reporter**. Access is gained by the **Federal Practice Digest**.

## Supreme Court

The United States Supreme Court is located in Washington, D.C. It is comprised of one chief justice and eight associate justices. All of its opinions and actions are published and can be located in three reporters. The official reporter is **United States Reports**, published by the United States Government Printing Office. The other two are commercial reporters. One is **Supreme Court Reporter** published by West, and the other is **United States Supreme Court Reports Lawyers' Edition**, published by Lawyers' Co-operative Publishing Company. Both West and Lawyers' Co-op have their own digests for access. Respectively, they are **United States Supreme Court Digest** and **Digest of United States Supreme Court Reports**. There is no digest for **United States Reports**, but both commercial sources provide a case's official citation.

In addition to the three reporters just discussed, the Bureau of National Affairs publishes **United States Law Week**. This is a looseleaf service that covers all opinions and actions by the United States Supreme Court. It is published approximately once a week.



## SELECTED LEGAL MATERIALS

### Administrative Law

Tippy, Roger, editor.

**Montana Administrative Procedure Manual.**

Helena: State Bar of Montana, 1980.

Detailed review section-by-section of the Montana Administrative Procedure Act.

Forms provided. Updated through 1984 - current update and revision in progress.

### Bankruptcy

Hingle, Charles W., Joel E. Guthels, Dale E. Reagor, John H. Grant, Daniel P. McKay, Neal G. Jensen, Randy J. Cox, and Ralph B. Kirscher.

**Basic Bankruptcy in Montana.**

Eau Claire, Wisconsin: National Business Institute, Inc., 1987.

Discusses initial considerations, rules, how to read the code, creditors, the debtor and the estate, strategies for creditors, the trustee, professionals: eligibility and fees, and the bankruptcy court.

### Construction Law

Addy, John Kelly, and Joe Gerbase.

**Montana Construction Law.**

Eau Claire, Wisconsin: Professional Education System, Inc., 1981.

Addresses topics such as contracts, bidding and bonding, damages, and construction lien law.

Lewis, Jack L., and Joe Gerbase.

**Montana Construction Law.**

Eau Claire, Wisconsin: Professional Education System, Inc., 1984.

Topics include plans and specifications, contracts, subcontracts, delays, mechanic's lien, damages, and defenses.

### Developmentally Disabled Law

**Rights of Developmentally Disabled Montanans.** 4th edition.

Helena: Montana Advocacy Program, 1988. Discusses physical accessibility, community services, discrimination, employment preference, guardians and conservators, individual rights, institutional services, social security, special education, and zoning.

## **Drinking and Driving Law**

Albrecht, John.

**Montana DUI Manual - Processing Charges of Driving Under the Influence of Alcohol/Drugs in Montana**

[Helena?]: [?], 1987.

Three main areas of discussion: apprehension, adjudication, and sentence and treatment. Table of cases. Forms.

## **Education Law**

**State Reporter of Education Law.**

Helena: State Reporter Publishing Company, 1982-

"A prompt and authentic report of administrative and judicial decisions and opinions on education in the State of Montana." - From preface to volume one.

Table of cases and subject index for individual volumes.

## **Employment Law**

Doney, Ted J.

**Handbook of State and Federal Employment Laws for Montana Public Employers.**

Helena: Labor Standards Division, 1983.

Topics include the employment relationship, hiring requirements, wages, hours of employment, employee rights and benefits, discrimination, and discharge and layoff.

## **Ethics**

Patterson, David J., chairman.

**Montana State Bar Professional Conduct and Ethics Committee.**

**Preamble, Scope and Comments to the Proposed Model Rules of Professional Conduct.**

Helena. State Bar of Montana, 1983.

Commentary on proposed rules. Rules were effective July 1, 1985.

## **Evidence**

### **Proposed Montana Rules of Evidence.**

Committee on Rules of Evidence.

(Helena): State Bar of Montana, 1976.

Study and analysis section-by-section of the proposed rules. The rules were subsequently adopted and can be found in Title 26 Chapter 10 **Montana Code Annotated**.

## **Family Law**

Elshoff, James D.

**Montana Family Law Handbook.**

Great Falls: PO Box 2323, Great Falls, 1987.

A case law compendium with newly enacted or amended statutes included. Periodically updated.

Garrison, Stephen F.

**Uniform Reciprocal Enforcement Support Act Manual.**

Helena: Department of Revenue, 1984.

A "how to" manual. Arranged sequentially from case processing to follow-up. Index. Forms.

Patterson, David J., and Mary Gallagher.

**Montana Family Law Pleading and Practice Forms and Agreements.** Missoula: School of Law, University of Montana, 1986.

Coverage includes service of process, dissolution petition and interrogatories, property settlement, child representation and support, child custody, and visitation, and proceedings after trial.

Taylor, Leslie C., and Jonathan R. Motl.

**Montana Child Abuse and Neglect Law - a Deskbook for Montana Judges, County Attorneys, Social Workers and Attorneys.** Helena: Department of Social and Rehabilitation Services, 1986.

Focuses on legal remedies. Discussion of statutory definitions, reports and investigations, and Indian Child Welfare Act. Forms.

## **Foreclosure**

Doak, Jon E., Joel E. Guthels, Dirk H. Larsen, and William A. Reid.

**Foreclosure and Repossession: How to Do it in Montana.**

Eau Claire, Wisconsin: National Business Institute, Inc., 1987.

Topics include repossession of personal property, mortgage foreclosures, and bankruptcy.

## Freedom of Information

Meloy, Peter Michael.

**Tapping Officials' Secrets: The Door to Open Government in Montana.**

[Washington, DC. ?]: The Reporters Committee for Freedom of the Press, 1989. A "how to" manual. Addresses questions such as what records and whose records are subject to the Montana Public Records Act (M.C.A. 2-6-101 et seq.) and who can request them. Also discusses exemptions to disclosure, specific types of records, procedures for obtaining records, and open meetings.

## Guardianship

**Montana Handbook for Guardians and Conservators.**

State Bar of Montana Elderly Assistance Committee.

Helena: 1990

The purpose of this handbook is "to provide a basic guide to the responsibilities and duties of being a court-appointed guardian or conservator for an adult", with its focus "distinctly toward incapacity and the elderly." (From the preface.) Topics covered include the roles of attorneys, guardian, and conservator, medical care, financial resources, living arrangements, and selecting a nursing home. Forms and glossary.

## Jury Instructions

**Montana Criminal Jury Instructions.**

Montana Supreme Court Criminal Jury Instruction Commission.

Montana: State Bar of Montana, 1990.

Looseleaf format. Annotated guide to criminal offenses. Index.

**Montana Pattern Instructions (Civil).**

Montana Supreme Court Commission on Civil Jury Instructions.

Montana: 1987

Looseleaf format. Instructions for various civil causes of action. Annotated.



## **Mental Health Law**

Gallagher, Mary.

**Your Mental Health Rights in Montana.**

Helena: Montana Advocacy Program, 1989.

"This manual is intended for any person who is brought into contact with the legal system through emergency detention, mental health commitment proceedings, guardianship proceedings or who has occasion to be involved with mental health facilities or providers of this state as a consumer of mental health services." From p. v.

## **Montana-Canada Relations**

Maly, Stephen, Tom Shillington, and Lauren McKinsey.

**Sharing the 49th Parallel: a Handbook on Canadian Relations for Montana Officials.**

Bozeman: 49th Parallel Institute, 1983.

Provides a broad overview. Divided into three parts: Part I -Primer on Canada; Part II - Selected topics (agriculture, environment, tourism, for example); Part III- Montana-Canada relations.

## **Montana Constitution**

**Montana Constitutional Convention 1971-1972.** 8 vols.

Helena: Montana Legislative Council, 1979-1982.

Volume one has biographical information on delegates, a table of delegates by district, staff, interns, delegate proposals, and committee proposals and reports of the Committee on Style, Drafting Transition and Submission. Volumes three through seven contain verbatim transcripts of the deliberations. Volume eight is the index. It has combined a delegate and a subject approach into one index.

**Proceedings and Debate of the Constitutional Convention Held in the City of Helena, Montana, July 4, 1989, August 17th, 1889.**

Helena: State Publishing Company, 1921.

Verbatim daily accounts of the deliberations. Has two indexes: subject and delegate.

## **Montana Constitution - Miscellaneous**

Numerous reports, studies, recommendations etc., regarding the 1972 constitution were published. For acquisition information contact the Montana Legislative Council.

## Native American Law

Bunch, Steven L.

**Treaties and Statutes Pertaining to Montana Indian Reservations.** 2 vols.  
Helena: Montana Legal Services Association, [1984 ?].  
Organized by general documents and by specific reservations.

Jonathan, Ralph, editor.

**Indian Tribal Codes: a Microfiche Collection of Indian Tribal Law Codes.**  
Seattle: Marion Gould Gallagher Law Library, School of Law, University of Washington, 1988.  
Fifty-six tribal codes are covered. Has the following Montana tribal codes: Blackfeet, Flathead, Fort Belknap, Northern Cheyenne, and Rocky Boy. A 1980 edition has the Crow and Fort Peck tribal codes. The 1988 edition has a paper by Richard L. Davies entitled "A Survey of Contemporary Tribal Codes" which "is a survey of Indian tribal codes, their history and current content." From p. 6 of the paper.

Lopach, James J., Margery Hunter Brown, and Richmond L. Clow

**Tribal Government Today - Politics on Montana Indian Reservations.**  
Boulder, Colorado: Westview Press, 1990  
A detailed study of Montana's seven Indian reservations. Analysis of the "reservation setting and economy, the historical evolution of reservation government, the distinctive brand of politics found on a reservation today, and characteristics of contemporary governmental structure." From the preface.

## Pleadings - Civil Litigation

Crowley, William F.

**Montana Pleading and Practice Forms.**  
(Missoula): School of Law, University of Montana, 1983.  
Commentary. Annotations. Subjects include process and service, motion practice, discovery, pre-trial, judgment, and post-trial.

## Political Science

Lopach, James J., Lauren S. McKinsey, Thomas Payne, Ellis Waldron, Jerry W. Calvery, and Margaret H. Brown.

**We the People of Montana..., The Working of a Popular Government.**

Missoula: Mountain Press Publishing Company, 1983.

A study of Montana politics. Subjects include Montana's two constitutions, political parties, interest groups and elections, and three branches of state government, local government, and natural resource policy.

## Probate Law

Niklas, David N.

**Montana Probate Procedure 1982-1983 Edition.**

Helena: State Bar of Montana, 1983.

Commentary, statutory references, forms.

Niklas, David N.

**Montana Probate Forms.**

Helena: State Bar of Montana, 1990. Forms and index of forms. Forms include probate, ancillary probate, guardianship, conservatorship, durable power of attorney, and living will declaration.

## Real Estate Law

McDonald, John W., Jr.

**Montana Real Estate Forms.**

Missoula: School of Law, University of Montana, 1988.

Subjects include brokers' contracts, contract for deed contract assignments, deeds, option, escrow, mortgage, trust indenture, construction lien, leases, and land titles.

Shook, Ralph, compiler.

**Montana Real Estate 1986 Laws, Rules, and Regulations.** Helena: State Publishing Company, 1986.

Compilation of statutory and administrative law regarding real estate law.

## Rules of Court

**Montana Rules of Court.**

St. Paul, Minnesota: West Publishing Company. Annual.

Coverage includes rules of civil procedure, appellate procedure, and rules of evidence for both Montana and federal courts.

## Senior Citizens Law

Olson, Douglas B., and Joan Uda, editors.

**Senior Citizens Legal Handbook: Laws and Programs Affecting Older Montanans.**  
Helena: State Bar of Montana, 1986.

"This handbook is an attempt to outline some of your more important rights and responsibilities as an older Montanan under state and federal law." From the introduction.

## Small Claims Court

**A Guide to the Small Claims Court System in Montana.**

[Missoula?]: Montana Public Interest Research Group, 1984.

Specifically written for the lay person explaining the small claims court system.

## Water Law

Stone, Albert W.

**Montana Water Law For the 1980's.**

[Montana]: [?], 1981.

Divided into the following areas: adjudication, water rights systems, development of the appropriation system in Montana, and federal and Indian reserved rights. Table of cases. Table of statutory citations. Index.

Stone, Albert W.

**1988 Supplement: Montana Water Law.**

[Montana]: [?], 1987.

An update to previous work. Table of cases. Table of statutory citations. Index.

## Workers' Compensation

Edmiston, James G. III, Geoffrey R. Keller, and William J. Mattix.

**Workers' Compensation in Montana.**

Eau Claire, Wisconsin: National Business Institute, Inc., 1989.

Subjects include what to be aware of once a claim is filed, medical issues, getting the employee off workers' compensation, vocational rehabilitation, dispute resolution, and hearings.

Grosfield, Norman H.

**Montana Workers' Compensation Manual.**

Helena: State Bar of Montana, 1979

Subjects include Workers' Compensation Court, the functions and procedure of claimant's and respondent's attorney, and claims management by the insurer.

Shapiro, Steven J., editor.

**Montana Workers' Compensation Act and Occupational Diseases Act Annotated Statutes and Administrative Rules.**

Helena: Division of Workers' Compensation Division, 1987.

Contains the statutory and administrative language regarding the law of workers' compensation. Reflects 1987 legislation which significantly changed the law on this subject. Annotated through December 1, 1987, but does not include any case law decided under the new statutes.



# **DIRECTORIES**

## **Lawyers' Deskbook & Directory**

An annual publication of the State Bar of Montana, this contains a wealth of information. Subjects covered include the names and addresses of attorneys licensed to practice law in Montana - both those living in Montana and those living outside the state, the composition of the following courts and offices: Montana Supreme Court, justices of the peace, city judges, county attorneys, clerks of court and federal courts, and miscellaneous information on the state bar itself.

## **Martindale-Hubble Law Directory**

Another directory with information on Montana attorneys is this annual publication. Published by Reed Publishing Company, this directory contains names, and where submitted, biographical sketches, types of law practiced, and representative clients, of attorneys in all fifty states and the District of Columbia.

## **Legislative Directory**

This provides general information on Montana's legislators, such as district and Helena addresses and telephone numbers, occupations, and committee assignments. It is a biennial publication of the Montana Legislative Council.

## **Your Guide to Montana's XXth Legislative Assembly**

A biennial publication of Montana Electric Cooperatives Association, this provides biographical information of Montana legislators. A photograph accompanies each description.

## **Montana State and County Elected Officials**

This biennial directory provides names and office addresses of state and county officials. It is published by the Office of Secretary of State.





## **MISCELLANEOUS SOURCES**

### **Continuing Legal Education**

For continuing legal education purposes, seminars on various legal subjects are held in Montana throughout the year. A key component of a seminar is the written material that is handed out to the participants. The material is usually a more detailed account of the speakers' oral presentations. Information about these publications can be obtained by contacting the State Bar of Montana.

The State Law Library of Montana has a collection of over 300 audio and video tapes on various law related subjects. Both collections are particularly strong in trial techniques. Within parameters, Montana attorneys can obtain CLE credits by using the tapes. For more information contact the State Law Library.

### **Legislative Materials**

The primary publisher for legislative material is the Montana Legislative Council. Reports, studies and recommendations on various topics, bill drafting manuals, and 1972 Constitutional Convention information are examples of what is published.

### **Montana Bankruptcy Reports**

Selective coverage of substantive bankruptcy rulings. Digest format. Publisher is Montana Law Week.

### **Montana Federal Reports**

Selective coverage of the opinions from federal district courts located in Montana. Digest format. Publisher is Montana Law Week.

### **Montana Law Review**

First published in 1940, this scholarly journal is published twice a year by the School of Law in Missoula. It contains articles, comments, and casenotes by law faculty members, practicing attorneys, and law students on Montana law related subjects. Volume 46, 1985 has a cumulative index for volumes one through forty-six, and volume 50, 1989, has one for volume one through fifty.

### **The Montana Lawyer**

The formal journal of the State Bar of Montana. Published monthly except July and August when it is not published.

### **Montana Law Week**

Digests of the following: all Supreme Court opinions and its substantive orders, all Attorney General opinions, and selective opinions from state district courts, federal district courts in Montana, federal ninth circuit, and Workers' Compensation Court. Publisher is Montana Law Week.

### **Montana Supreme Court Preview**

Reports of newly filed appeals and petitions. Publisher is On Line Communication.

### **Public Land Review**

Since 1980 the School of Law in Missoula has annually published this journal which contains articles, comments, and casenotes on legal issues concerning the public lands.

### **Trial Trends**

Quarterly publication of the Montana Trial Lawyers Association. Articles of interest to civil litigation.

## STATE LAW LIBRARY OF MONTANA

Located in the capitol complex in Helena, the Law Library is a public facility open to everyone, attorney and lay person alike. Its collection of over 106,000 volumes includes statutes and case law from all fifty states, the District of Columbia, and the federal legislative and judicial branches of government, as well as federal administrative law. A large portion of the collection consists of looseleaf services, treatises, form books, and individual books on legal practice and procedure. There are subscriptions to over 450 legal periodicals. In addition to the traditional format of paper sources, the Law Library has a collection of over 300 audio and video tapes and conducts computer assisted legal research on a cost recovery basis. The Law Library is a selective United States Government Depository Library.

A particular strength of the Law Library is its Montana related material. The collection includes legislative sources, such as bills, committee minutes, interim committee reports, journals, legislative histories, and all territorial and state codes and session laws. Montana Supreme Court opinions and briefs that have been filed before the Supreme Court are available as are administrative rules, constitutional convention proceedings for both the 1889 and 1972 constitutional conventions, Attorney General opinions, and publications by the State Bar of Montana.

The Law Library's address is: 215 North Sanders, Helena, 59620. Its telephone and FAX numbers are, respectively, (406) 444-3660 and (406) 444-3603.



## SCHOOL of LAW - UNIVERSITY OF MONTANA

Founded in 1911, the Law School is located in Missoula. Accredited by both the Association of American Law Schools and the American Bar Association, it offers the Juris Doctor (J.D.) degree upon the successful completion of ninety semester credits. At least six semesters of study are required for graduation. The Law School has approximately 225 students and sixteen full-time faculty.

According to its 1990-1991 bulletin, the Law School has five major educational goals: "knowledge of the law, analytical ability, practical skills, perspective on the societal role and responsibilities of law and lawyers and sensitivity to the dynamics of social and interpersonal interaction." These goals are attained by both traditional and innovative methods of teaching, legal writing, trial practice, and clinical training programs.

For more information contact:

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## STATE BAR OF MONTANA

Located in Helena, the State Bar of Montana is the formal association for the Montana legal profession. It is an integrated bar, meaning that membership is a mandatory requirement for those attorneys licensed to practice law in the state. Approximately 2,800 attorneys are members. The State Bar has a board of trustees and a permanent staff headed by an executive director. Annual elections are held for officers.

The State Bar is active in many areas. It administers the continuing legal education requirements for attorneys. It sponsors legal seminars and publishes material on various legal subjects. Committees, such as the ones on ethics, elderly assistance, judicial evaluation, and lawyer referral, address special concerns.

The State Bar can be contacted at:

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## GLOSSARY

All definitions were taken from **Black's Law Dictionary**, 5th edition.

**Administrative Law** - Body of law created by administrative agencies in the form of rules, regulations, orders and decisions.

**Advance Sheets** - Pamphlets containing the most recently reported opinions of specific courts or the courts of several jurisdictions.

**Annotation** - A remark, note, case summary or commentary on some passage of book, statutory provision, or the like, intended to illustrate or explain its meaning.

**Appellate Jurisdiction** - The power vested in an appellate court to review and revise the judicial action of an inferior court, evidenced by an appealable order or an appealable judgment rendered by such court.

**Brief** - A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, pertinent laws, and an argument of how the law applies to the facts supporting counsel's position.

**Case** - A judicial proceeding for the determination of a controversy between parties wherein rights are enforced or protected, or wrongs are prevented or redressed.

**Case Law** - The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

**Citators** - A set of books which provide, through letter-form abbreviations or words, the subsequent judicial history and interpretation of reported decisions, and lists of cases and legislative enactments construing, applying or affecting statutes.

**Code** - A systematic collection, compendium or revision of laws, rules or regulations.

**Constitution** - The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the charter and conception of its government, laying the basic principle to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign power.

**Court of First Impression** - A court of original or primary jurisdiction.

**Decision** - A determination arrived at after consideration of facts, and in legal context, law.

**Digest** - An index to reported cases, providing brief statements of court holdings or facts of cases, which is arranged by subject and subdivided by jurisdiction and courts.

**Enabling Act** - Term applied to any statute enabling persons or corporations to do what before they could not.

**Et seq.** - An abbreviation for "and the following."

**Interstate Compact** - A voluntary agreement between two or more states which is designed to meet common problems of the parties concerned.

**Jurisdiction** - Authority by which courts act. It exists when a court has cognizance of class of cases involved, proper parties are present, and point to be decided is within the powers of the court.

**Opinion** - The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based.

**Organic Act** - An act of Congress conferring powers of government upon a territory.

**Reporters** - Published volumes of case decisions by a particular court or group of courts.

**Slip Opinion** - An individual court decision published separately soon after it is rendered.

**Statute** - An act of the legislature declaring, commanding or prohibiting something.

**Statutory Law** - That body of law created by acts of the legislature in contrast to the law generated by judicial opinions and administrative bodies.

**Superseded** - To be rendered unnecessary and void.

**Uniform Laws** - Laws in various subject areas, approved by the Commissioners on Uniform State laws, that are often adopted, in whole or substantially, by individual states.







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